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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-54

TRANSAMERICAN FREIGHT LINES, INC.,
Petitioner,

vs.

BRADA MILLER FREIGHT SYSTEMS, INC., et al.,
Respondents.

PETITIONER'S REPLY BRIEF

In Support of Its Petition for a Writ of Certiorari

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TABLE OF CASES CITED

Page

Allstate Insurance Company v. Alterman Transport Lines, Inc., 5th Circ. 1972, 465 F. 2nd 710 3

Carolina Freight Carriers Corporation v. Pitt County Transportation Company, 4th Circ. 1974, 492 F. 2nd 243 3

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In the Petition for a Writ of Certiorari which has been filed herein, every effort was made to demonstrate the reasons for which it is felt the petition should be granted. Likewise, every effort was made to avoid offering an additional burden to this Court by submitting argument in the petition on the ultimate merits of the case. Petitioner's brief on the merits will hopefully be presented at the appropriate time.

Respondent's Brief in Opposition to the Petition for Writ of Certiorari contains arguments relating to the merits which un-

fortunately require explanation at this point in order that they not be misleading.

First, in the paragraph at the top of page two of its brief, respondent states that it denies that Hardrick was respondent's employee. Evidence in the record in this case is abundant to demonstrate that in fact Hardrick was respondent Brada's employee; however, whether or not this was a fact is immaterial to the issues in the present posture of this case. Brada's motion for summary judgment stated, "That the pleadings, depositions, answers to interrogatories and exhibits on file show that the indemnity provision of the trip lease, set out in paragraph 3 of Amended Crossclaim of Defendant Transamerican Freight Lines, Inc. is contrary to public policy and is unenforceable." This was the issue presented to the Courts below.[1] Brada's position has been that this issue was determinative of the case regardless of the other facts. This position has been supported by the decisions of the District Court and the United States Court of Appeals for the Seventh Circuit in which decisions, for purposes of the issue involved, it was assumed that Hardrick was Brada's employee.

If the fact of Hardrick's employment by Brada had been both disputed and material to the issue involved, this case would never have reached summary judgment since those circumstances would have required a trial.

For Brada to raise a question at this time as to Hardrick's employment injects a false and confusing issue into the case. The true issue involved here is stated in the "Question Presented for Review" which appears on page three of the Petition for a Writ of Certiorari.

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[1] *Wear v. Brada Miller Freight Systems, Inc. et al.*, District Court 1973, Not Yet Reported, Appendix A to Petition for a Writ of Certiorari; *Wear v. Brada Miller Freight Systems, Inc. et al.*, 7th Circ. 1974, Not Yet Reported, Appendix B to Petition for a Writ of Certiorari.

Secondly, under the argument portion of its brief respondent states that the facts of this case do not fall within the rule announced in *Allstate Insurance Company v. Alterman Transport Lines, Inc.*, 5th Circ. 1972, 465 F. 2nd 710, Appendix C to Petition for a Writ of Certiorari. In an apparent effort to support this statement respondent then refers to certain clauses in the lease agreement regarding the maintenance of the equipment, compliance with government regulations and payment of taxes. Respondent infers that these clauses distinguish the case at bar from the *Allstate* case and that of *Carolina Freight Carriers Corporation v. Pitt County Transportation Company*, 4th Circ. 1974, 492 F. 2nd 243, Appendix D to Petition for a Writ of Certiorari. An examination of the opinions in the *Allstate* and *Carolina Freight Carriers* cases reveals that this maintenance of equipment clause was also in *Allstate* while all of the clauses to which Brada refers appear in the *Carolina Freight Carriers* case. Therefore, the distinction which Brada attempts to make, does not exist. The decision of the Seventh Circuit in the present case construes the facts as being similar to those in the *Allstate* case.

It is again respectfully submitted that because of the reasons set forth in the Petition for a Writ of Certiorari, none of which have been challenged in Respondent's Brief, the Petition should be granted.

Respectfully submitted

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